



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 01661-99
9 December 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: LT [REDACTED] SC, USN [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 18 Dec 98 w/attachments
(2) CO, NAVADMINCOM ltr dtd 14 Jun 99
(3) PERS-311 memo dtd 28 Jun 99
(4) PERS-834C memo dtd 14 May 99
(5) Subject's ltr dtd 13 Aug 99 w/enclosure
(6) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the punitive letter of reprimand of 17 September 1996 and related documents. He further requested removal of his fitness reports for 1 September to 1 October 1996 and 1 September 1997 to 28 February 1998, copies of which are at Tabs A and B. The Board did not consider his request to remove the letter of reprimand and related documents, since the Navy Personnel Command (NPC) has removed them pursuant to enclosure (2), reflecting Petitioner's current commanding officer (CO), at a different command, set aside the nonjudicial punishment (NJP) that awarded the letter of reprimand.

2. The Board, consisting of Messrs. Mazza, Pauling and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 2 December 1999, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner received the NJP for assault of an enlisted member on 16 September 1996. The CO's letter at enclosure (2) gives no reason for the set aside. Petitioner says he is

making his request in order that he may continue his career as a supply officer in the Navy; and that he does not want to be forced to retire after 20 years of service because of an isolated incident where he "made a mistake." He says he was recently diagnosed with dysthymic disorder, a medical condition that could have contributed to the events of 16 September 1996; that he knows he was in the wrong on that date, but feels a nonpunitive letter would have sufficed; and that he believes the main reason he was given a punitive letter was that the enlisted member threatened the command with a letter to the National Association for the Advancement of Colored People and his Congressman. Specifically regarding the contested fitness report for 1 September 1997 to 28 February 1998, he contends the events of 16 September 1996 caused a delay until 10 August 1998 of his promotion to lieutenant, which was to be effective 1 January 1998. He further contends this delay caused him to receive the contested periodic lieutenant junior grade fitness report ending 28 February 1998, rather than a periodic lieutenant fitness report ending 31 January 1998.

c. The contested fitness report for 1 September to 1 October 1996 reflects adverse marks of "1.0" (lowest) in blocks 34 and 35, and the following explanatory comments in block 41:

34 Exhibited a lack of self control and was taken to CO's mast for assault of an enlisted service member.

35 Failed to live up to conduct expected of an officer with outbursts of temper and assault.

d. The contested fitness report for 1 September 1997 to 28 February 1998 is not adverse; on the contrary, it notes Petitioner was awarded the Navy Achievement Medal. However, the promotion recommendation is "Promotable," the third best, with two other lieutenants junior grade marked above Petitioner (one "Must Promote," the second best, and one "Early Promote," the best) and none with or below him.

e. In correspondence attached as enclosure (3), the NPC office having cognizance over fitness report matters has recommended that the contested fitness reports stand, but that a memorandum be placed in Petitioner's record to change from 28 February 1998 to 31 January 1998 the ending date of the report beginning 1 September 1997. Regarding the report for 1 September to 1 October 1996, they stated the reporting senior's perception of a subordinate's performance may be influenced by incidents which occurred during the period; that the report is procedurally correct; and that while it may be true Petitioner was suffering from an illness which caused his performance during the period to decline, this does not make the report unjust. Concerning the report for a September 1997 to 28 February 1998, they observed that Petitioner was a lieutenant junior grade on the ending date of the report. They noted the commendatory correspondence and other documentation of Petitioner's performance, but stated this does not show he was incorrectly evaluated in the fitness reports at issue.

f. In correspondence attached as enclosure (4), submitted before Petitioner's NJP was set aside, the NPC office having cognizance over personnel performance and security commented that unless withdrawn or set aside, Petitioner's punitive letter of reprimand and all references to it should remain in his record.

g. Enclosure (5) is Petitioner's response to the NPC advisory opinions at enclosures (3) and (4), providing documentation that his NJP had been set aside. He contends the fitness report for 1 September to 1 October 1996 mentions the NJP which has been set aside, so it should be removed and the uncontested fitness report ending 31 August 1996 should be administratively extended to 1 October 1996. He raises a new argument concerning the report for 1 September 1997 to 28 February 1998. He notes that because of his medication for his medical condition, he was placed on limited duty four days before the lieutenant junior grade fitness reports were signed, and this precluded his going on an upcoming deployment. He alleges the reporting senior decided anyone not making the deployment would be marked lower on their fitness report; that the supply officer and executive officer felt this was unfair and approached the reporting senior about it; but that the reporting senior stood firm and said "if they don't deploy the most they'll get is 'Promotable'." Petitioner contends this was particularly unfair, since he asserts he was the only officer in his category to receive an award during this cycle. The same reporting senior marked him "Early Promote" in the reports immediately before and after the contested report ending 28 February 1998.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board generally concurs with the contents of enclosure (3) in concluding that the contested fitness reports should not be removed. However, they find the report for 1 September to 1 October 1996 should be amended by removing the express reference to the NJP which has been set aside, "and was taken to CO's mast for assault of an enlisted service member." They find complete removal of this report is not justified, since the set aside letter gives no reason for the action, and Petitioner admits he "made a mistake." Although the NJP has been set aside, the Board is unable to find Petitioner committed no misconduct.

Regarding the contested fitness report for 1 September 1997 to 28 February 1998, the evidence does not establish Petitioner committed no misconduct, so the Board is unable to find an injustice in the delay of his promotion to lieutenant, which caused him not to receive a lieutenant fitness report ending 31 January 1998. The Board finds no basis for changing the ending date of the contested lieutenant junior grade fitness report, as enclosure (3) proposes, from 28 February to 31 January, the ending date for periodic lieutenant fitness reports. Finally, the Board is unable to find Petitioner was marked "Promotable" because his placement on limited duty prevented him from going on a deployment. In this regard, they particularly note that Petitioner provided no statements from other persons to support his allegations as to why he was so marked.

In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the following from the block 34 justification in block 41 ("Comments on Performance") of the fitness report for 1 September to 1 October 1996, dated 4 October 1996 and signed [REDACTED], USN, leaving the fitness report as corrected in the record:

and was taken to CO's mast for assault of an enlisted service member

The block 34 justification, as corrected, is to read as follows:

34 Exhibited a lack of self control.

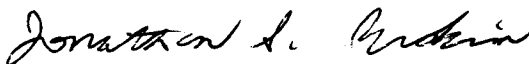
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.


d. That the remainder of Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY

**NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**

1661-99

1610
PERS-311
28 June 1999

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: [REDACTED] U [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests to remove the punitive letter of reprimand and all associated documents of 17 September 1996, and remove the fitness reports for the periods 1 September 1996 to 1 October 1996 and 1 September 1997 to 28 February 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the punitive letter of reprimand and all associated documents properly reflected in the member's record, also the fitness report for the period 1 September 1997 to 28 February 1998. The fitness report for the period 1 September 1996 to 1 October 1996 was never received by PERS-311, however, the member provided a copy with his petition. The fitness report has been placed in the member's digitized record. The fitness reports are signed by the member acknowledging the contents and his right to submit a statement. The member indicated his desire to submit a statement for the fitness report for the period 1 September 1997 to 28 February 1998. The member's statement and endorsement has not been received by PERS-311. In accordance with reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the fitness report to submit a statement.

b. The fitness report for the period 1 September 1996 to 1 October 1996 is adverse, prepared upon the member's detachment from the command. The grades on a fitness report reflect the reporting senior's perception of the subordinate's performance and may be influenced by incidents, which occurred during the period of the report. The report is procedurally correct. It may be true the petitioner may have been suffering from an illness during the timeframe and as a result his performance declined. However, that does not make the fitness report unjust or invalid.

c. The fitness report for the period 1 September 1997 to 28 February 1998 is a periodic/regular report. At the time of the ending date of the fitness report the member was a Lieutenant junior grade and he was not notified until 10 August 1998 that his effective date of promotion to Lieutenant was 1 January 1998, almost six months later.

d. The commendatory correspondence and other documentation concerning [REDACTED] performance is noted, however, this material does not show his performance was incorrectly evaluated in his fitness report.

e. Further review of the member's record revealed the concurrent fitness report for the period 1 March 1998 to 13 November 1998 was filed in error. It was not counter-signed by the regular reporting senior. We have removed it from the member's record and forwarded it to the regular reporting senior for signature.

f. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged and a memorandum be placed in the record to change the ending date of the fitness report for the period 1 September 1997 to 28 February 1998 to 31 January 1998.

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Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
CHIEF OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370-5000

1661-99

IN REPLY REFER TO

1611

Ser 834C/711

14 May 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters, NPC-00ZCB

Subj: LT [REDACTED] ER, SC, USN, [REDACTED]

Ref: (a) BCNR memo 5420 Ser Pers-00ZCB/NPC-00ZCB dtd 30 Apr 99
(b) CO, USS VELLA GULF (CG 72) ltr 5800 Ser CO of 17 Sep 96
(c) Manual of the Judge Advocate General § 0114

Encl: (1) BCNR file 01661-99 w/service record

1. Reference (a) requested an advisory opinion in response to [REDACTED] request to remove reference (b), a punitive letter of reprimand, and all related documents from his officer permanent personnel record. Enclosure (1) is returned as a matter under the purview of BCNR.
2. Reference (b) was filed [REDACTED] record in accordance with applicable instructions and appears consistent with the handling of similar cases. [REDACTED]'s argument that the punitive letter may be a significant obstacle to any subsequent promotions is purely speculative and is refuted by his promotion to O-3 wherein the selection board had full knowledge of his nonjudicial punishment.
3. Reference (c) directs that punitive letters will be filed in the member's official record unless withdrawn or set aside. Accordingly, unless withdrawn or set aside, reference (b) and all references to it should remain in his record.

[REDACTED]
Captain, U.S. Navy
Director
Personnel Performance & Security
Division